

REMARKS

Claims 1-11 are pending in the current application. Claims 5-7 were withdrawn from consideration. In the non-final Office action mailed October 28, 2009, the Office withdrew rejection of the claims 1-4 and 8-11 under 35 U.S.C. § 102(e), but presented new rejections of these claims under 35 U.S.C. § 103(a).

35 U.S.C. § 103 Rejections

The Office rejected claims 1-4 and 8-11 under 35 U.S.C. § 103(a) as being unpatentable by Ko et al. (U.S. Pat. 7,294,379) in view of Frommer et al. (U.S. Pat. 5,947,369). It is noted that, in the previous Office action, portions of the Ko et al. references relied upon in the earlier 35 U.S.C. § 102(e) rejection were not present in the provisional patent application and, thus, not entitled to the earlier filing date. In presenting the obviousness rejection in the most current Office action, the Office now relies on different sections of Ko et al. than relied on earlier in the prosecution and which the Office asserts were present in the provisional patent application.

The initial burden lies with the Office to establish a *prima facie* case of obviousness. To establish a *prima facie* case, according to MPEP 2143, the Office must establish that "the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference."

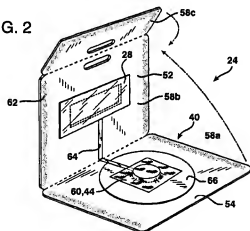
However, even when combined, the Ko et al. and Frommer et al. references provided by the Office do not disclose each and every element as claimed and, therefore, the *prima facie* case of obviousness has not been established. When the Frommer et al.

reference is read in its entirety, the teachings asserted by the Office in the Office action are not clearly made by this reference.

Specifically, the Office relies on the Frommer et al. reference to show "the first portion being smaller in area than the second portion" such that "a portion of the adhesive on the second portion remains exposed when the two portions are folded." In making the rejection, the Office states that "when portions 52, 54, are folded, portion 58c with adhesive 62 remains exposed for securing the badge to an item to an item (upon further folding of portion 58c).

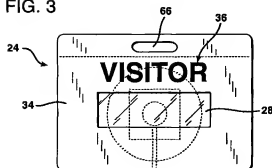
As a starting point, it is informative to examine the cited figures of the Frommer et al. reference and the supporting text (col. 8, lines 12-36) of the specification. The text describing these drawings is not explicitly cited in the Office action.

FIG. 2



Still referring to FIG. 2, the badge 24 is shown prior to activation, i.e., it is open. In order to activate the badge it is folded into position for activation, see FIG. 3, to initiate the start of the predetermined period of time. Referring to FIGS. 2-3, the badge 24 includes three panels 58a, b & c hingedly joined along corresponding weakened portions to facilitate folding of the badge 24 into its activated stage. The first panel 58a is provided with a fabric 60 impregnated with an electrolyte, preferably a hydrogel electrolyte 44. An adhesive patch 62 overlays the fabric 60 to adhere it to the panel 58a. The adhesive patch 62 also adhesively engages the second panel 58b when the second panel 58a is folded onto the first panel 58b in order to activate the badge 24. A counterelectrode 42 is disposed underneath the electrolyte 44. A conductive element 64 extends from the counterelectrode 42 to the metalized film 28 on the second panel 58b. When the first and second panels 58a, b are folded together to activate the badge 24, the metallic film 28 comes into contact with the fabric 60 impregnated with the electrolyte 44. This activation "completes the circuit" to cause a flow of current that causes the chemical alteration of the metallic film 28 to alter the reflectiveness of the metallic film 28. Panel 58c is folded over 58b to provide a reinforced attachment means 66 for attaching to a clip or pin for attachment to a persons clothing.

FIG. 3



When reading the text of the specification, it becomes clear that at least some of the items are mislabeled or misidentified between the figures and the specification. For the reasons described below, it can not be clearly established from this reference that item 62 of FIG. 2 is adhesive.

On preliminary examination of the figures, even without reference to the text of the specification, the discerning observer will catch that item 66 is inconsistently labeled between FIGS. 2 and 3. Looking at the cited text above, in the last sentence item 66 is "a reinforced attachment means 66 for attaching a clip or pin for attachment to a persons clothing." Thus, item 66 is clearly mislabeled in FIG. 2.

The fact that item 66 is mislabeled in FIG. 2 is important because it alters the manner in which other inconsistencies in the cited text are interpreted. Lines 18-24 of column 8 read:

"The first panel 58a is provided with a fabric 60 impregnated with an electrolyte, preferably a hydrogel electrolyte 44. An adhesive patch 62 overlays the fabric 60 to adhere it to the panel 58a. The adhesive patch 62 also adhesively engages the second panel 58b when the second panel 58a is folded into the first panel 58b in order to activate the badge 24."

Reviewing this text and the reference numerals applied to the figures, the structural connectivity described in the specification is in clear conflict with the numbering of FIG. 2.

Let us examine the above paragraph sentence by sentence. The first sentence establishes that the first panel 58a is provided with a fabric 60 impregnated with an electrolyte,

preferably a hydrogel electrolyte 44. Although item 58a does not include an arrow to reference the lower right panel, let's assume that this is indeed the panel being referred to. The reference numerals 60, 44 in FIG. 2 then would correspond to the shaded square, which is presumably the hydrogel impregnated fabric.

Then, in the second sentence, it is indicated that the adhesive patch 62 overlays the fabric 60 to adhere it to the panel 58a. But when FIG. 2 is examined, this described connectivity appears inconsistent with the reference numerals. The only thing that appears to connect the fabric 60 to the panel 58a would be the circular item 66. However, as established above, item 66 is the attachment means for attaching a clip or pin for attachment to a persons clothing, since it is correctly described with respect to FIG. 3. Accordingly, we can reason from the described connectivity of the specification that item 66 on FIG. 2 is incorrectly labeled as, in fact, the adhesive patch 62.

The third sentence confirms this reasoning. The third sentence states that, "The adhesive patch 62 also adhesively engages the second panel 58b when the second panel 58a [sic] is folded into the first panel 58b [sic] in order to activate the badge 24." For the adhesive patch to engage to the second panel upon folding, the adhesive patch must be located on the first panel.

For the reasons stated above, item 62 in FIG. 2 of the Frommer et al. reference has not been correctly identified as an adhesive in the rejection and any construction as such would be speculative. Accordingly, the Office action fails to meet the initial burden of establishing a *prima facie* case of obviousness. The Applicant respectfully requests the withdrawal of the rejection of claims 1-4 and 8-11 based on 35 U.S.C. §

103(a) for being unpatentable in view of the Ko et al. and Frommer et al. references.

Conclusion

In view of the remarks above, it is believed that the application is in condition for allowance. However, the Examiner is invited to contact the undersigned attorney by telephone if doing so would expedite the allowance of this application.

No additional fees are believed to be due for this response. However, in the event that other fees are due, including fees for an extension of time, please charge them to Deposit Account 17-0055.

Respectfully submitted,

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